FILE COPY

FILE
APR 15
MICHAEL RODAK

Nos. 73-437, 73-457, 73-464

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

MOBIL OIL CORPORATION, *Petitioner*,

v.

FEDERAL POWER COMMISSION, *Respondent*.

PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK, *Petitioner*,

v.

FEDERAL POWER COMMISSION, *Respondent*.

MUNICIPAL DISTRIBUTORS GROUP, *Petitioner*,

v.

FEDERAL POWER COMMISSION, *Respondent*.

On Petitions for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

REPLY BRIEF OF THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK

CHARLES A. ZIELINSKI
Assistant to the Chairman
PUBLIC SERVICE COMMISSION
OF THE STATE OF NEW YORK
44 Holland Avenue
Albany, New York 12208

MICHAEL H. ROSENBLOOM
WILNER & SCHIENER
2021 L Street, Northwest
Washington, D. C. 20036
Attorneys for Petitioner

April, 1974

WILSON - EPES PRINTING CO., INC. - RE 7-6002 - WASHINGTON, D. C. 20001

TABLE OF CONTENTS

	Page
Argument	2
1. The Improper Elimination of $225,000,000 in Refunds for Charges in Excess of the Just and Reasonable Rates for Gas Sold Prior to October 1, 1968	2
2. The Invalidity of the Contingent Escalations and Refund Work-Off Provisions of the "Settlement"	8
3. The Commission's Improper Consideration of the "Settlement Proposal"	12
Conclusion	15

TABLE OF AUTHORITIES

CASES:

Arrow Transporting Co. v. *Southern Railway Co.*, 372 U.S. 658	7
Atlantic Refining Co. v. *Public Service Commission*, 360 U.S. 378	7
Austral Oil Co. v. *Federal Power Commission (Southern Louisiana Area Rate Cases)*, 428 F.2d 407, 444 F.2d 125 (5th Cir., 1970), *certiorari denied*, 400 U.S. 950	3
Colorado Interstate Gas Co. v. *Federal Power Commission*, 324 U.S. 581	14
Dolcin Corp. v. *Federal Trade Commission*, 219 F.2d 742 (D.C.Cir., 1954), *certiorari denied*, 348 U.S. 981	3
Federal Power Commission v. *Hope Natural Gas Co.*, 320 U.S. 591	14
Federal Power Commission v. *Tennessee Gas Transmission Corp.*, 371 U.S. 14 5	7
Ford Motor Co. v. *National Labor Relations Board*, 305 U.S. 364	3

TABLE OF AUTHORITIES—Continued

	Page
Morgan v. *United States*, 304 U.S. 1	3
Permian Basin Area Rate Cases, 390 U.S. 747	14
Public Service Commission v. *Federal Power Commission (Texas Gulf Coast Area Natural Gas Rate Cases)*, 487 F.2d 1043 (D.C. Cir., 1973)	8, 9
Public Service Commission v. *Federal Power Commission*, Case Nos. 24,716 *et al.* (D.C. Cir., decided March 25, 1974)	4
Texas Eastern Transmission Corp. v. *Federal Power Commission*, 414 F.2d 344 (5th Cir. 1969)	11
FEDERAL POWER COMMISSION CASES:	
Southern Louisiana Area Rate Proceeding (Southern Louisiana I), 40 F.P.C. 530 (1968)	2, 4, 9
STATUTES AND RULES AND REGULATIONS OF THE FEDERAL POWER COMMISSION:	
Natural Gas Act, 15 U.S.C. § 717, *et seq.*	
Section 4(a), 15 U.S.C. § 717c(a)	6
Section 19(b), 15 U.S.C. § 717r(b)	4
Section 7, 15 U.S.C. § 717f	7
Administrative Procedure Act, 5 U.S.C. § 1001, *et seq.*	14

IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

Nos. 73-437, 73-457, 73-464

MOBIL OIL CORPORATION, *Petitioner*,

v.

FEDERAL POWER COMMISSION, *Respondent*.

PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK, *Petitioner*,

v.

FEDERAL POWER COMMISSION, *Respondent*.

MUNICIPAL DISTRIBUTORS GROUP, *Petitioner*,

v.

FEDERAL POWER COMMISSION, *Respondent*.

On Petitions for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

REPLY BRIEF OF THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK

ARGUMENT

The Public Service Commission of the State of New York, petitioner in Case No. 73-457, herewith files its reply brief in the above entitled case. The contents of the reply brief have necessarily been limited by the extremely short period of time which has been available since we received copies of the page proof of the brief for the respondent Commission on April 9, 1974, and our desire to place at least these preliminary views before the Court prior to oral argument.

1. The Improper Elimination of $225,000,000 in Refunds for Charges in Excess of the Just and Reasonable Rates for Gas Sold Prior to October 1, 1968.

In our opening brief, we argued that there was no legal authority for the Commission relieving the producers of approximately $225,000,000 in refunds it had ordered in its first *Southern Louisiana Area Rate Case*, 40 F.P.C. 530 (1968) by setting new just and reasonable levels for the period prior to that decision on grounds it had now concluded the rate of return and exploration and development expense allowance it had fixed for such gas in the earlier opinion was not "adequate" (J.A. II, 653).[1] We pointed out that both the rate of return fixed for new and old gas in the earlier opinion and its "E & D" expense

[1] We also argued (NY Br. 26-31) that the particular "just and reasonable" rate levels fixed for the various periods prior to October, 1968 in the settlement approved by the Commission were unrelated to return or "E and D" expense, and had no other reasonable relationship to a proper just and reasonable determination, but were merely rationalizations of levels established in the "settlement" as a product of bargaining. The answering briefs make no real effort to respond to these arguments, the Commission confining itself to the contention that, once it was determined that immediate refunds should not be ordered, the extent of any complete write-off of refund obligations and the particular just and reasonable levels fixed to justify this determination could be left to "the negotiations leading to the settlement proposal" (FPC Br. 44).

calculation had been expressly affirmed by the Court of Appeals on review[2] (428 F.2d at 431-434), and that whatever power the Court of Appeals might have had to authorize the Commission to retrospectively reopen any portion of a final decision not found to be legally erroneous on plenary review, would not apply, and under the clear language of the Court of Appeals was not intended to apply, to the matters it expressly affirmed in its opinion.

The briefs of the Commission and its supporters do not successfully answer our contentions. The general authority of the Court of Appeals to permit the Commission to retrospectively modify its order in the first Southern Louisiana proceeding is supported primarily by citations to *Ford Motor Co. v. National Labor Relations Board*, 305 U.S. 364 (FPC Br. 22, Exxon Br. 18). This case is, however, completely inapposite to the present situation since the reviewing court remanded an enforcement proceeding to the Board, at the latter's request, *prior* to any consideration of the merits of the Board's order.[3] No case has been cited, and we know of none, where a reviewing court was held to have authority to authorize an agency to reopen retrospectively a final ratemaking decision it had held to be free of legal error, because either the Court or the agency believed subsequent events might make the decision unwise.[4] And certainly this is true

---

[2] *Austral Oil Co.* v. *Federal Power Commission (Southern Louisiana Area Rate Cases)*, 428 F.2d 407, 444 F.2d 125 (5th Cir., 1970) certiorari denied, 400 U.S. 950.

[3] The Supreme Court's decision in *Morgan* v. *United States*, 304 U.S. 1, had apparently alterted the Board to the *procedural* invalidity of its order.

[4] The *Dolcin* case cited by the Commission (FPC Br. 23) is not to the contrary. There the court, though affirming the Federal Trade Commission's order which enjoined Dolcin from making certain claims in its advertising, directed the Commission to consider a newly completed study to determine whether it should *prospectively* change its order. And the Commission cases, cited at page 19 of the Exxon brief involve situations where the Commission

with respect to portions of the Commission's decision which the reviewing Court expressly affirmed.

In any event, it is clear that the Court of Appeals did not purport to authorize the open-ended remand for which the Commission and its supporters contend. On the contrary, it went out of its way when the exact nature of its action was questioned on remand to "emphasize" that its judgment was "an affirmance not a remand" (444 F.2d at 127). And with particular respect to the refunds which the Commission had ordered, it stated "it may be that the refunds are too burdensome in light of new evidence to be in the public interest. *In that case*, it is our judgment that the Commission shall have the power and the duty to remedy the situation by changing its orders" (*Ibid.*, emphasis added). Finally, to remove any doubt of the limited nature of its action, it concluded in its order on rehearing with the statement that "in all other respects, the original opinion of this Court is the final disposition of this appeal" (*Ibid.*).[5]

The Commission, however, chose to treat the Court's opinions as authorizing it to act as though its earlier opinions had not existed and it was free to set rates for all vintages and deliveries of gas *ab initio* (J.A. II, 587).

---

action being modified had been held to be *unlawful* on court review. The Commission citation (FPC Br. 24, n. 21) of the provision of Section 19(b) of the Natural Gas Act which authorizes parties to seek a remand for consideration of newly discovered factual material is surprising in view of the fact that such a motion made to the Court by the producers in this case prior to briefing and argument was denied, *sub silentio*, by the Court and the Commission's own motion to remand expressly rejected.

[5] The Court of Appeals for the District of Columbia in an Opinion issued on March 25, 1974, in *Public Service Commission, et al.* v. *Federal Power Commission*, Case Nos. 24,716, *et al.*, similarly construed the Fifth Circuit decision in the first *Southern Louisiana Area Rate Case*, as establishing final just and reasonable area rates subject to only prospective change as to the appropriate rate level. See Slip Opinion at pp. 87-90.

In tune with this view it did not make any findings based on new evidence that the burdensome nature of the refund obligation justified either the entire remission of $225,000,000 of the outstanding $375,000,000 obligation or the work-off of the remaining $150,000,000. The nearest it comes to such a finding is its statement at an earlier portion of its Opinion (J.A. II, 629), that "available capital will not be diminished by requiring immediate cash refunds." This statement does not constitute a finding that the capital available to the producers if refunds were ordered would be inadequate for an optimum future gas search effort. No such finding was possible since the Commission made no effort to determine either the capital needs of the producers or the funds otherwise available to the producers from internally generated revenues, or from outside sources.

Even if there had been a basis for concluding that any "immediate refunds" would deprive the producers of the capital necessary for the required gas search efforts, despite the Commission action to increase producer revenues by well over $125,000,000 per year as a result of the higher flowing gas rates and the still higher rates for new gas which were made applicable to all sales contracts made in the almost three years between its two Southern Louisiana rate cases, such a finding would not have justified the complete elimination of almost 60% of the refunds of excessive rate charges prior to 1968. Instead, repayment of the refunds could have been deferred, spread out over a period of time, or achieved through a reduction in the rates for future gas deliveries. But no consideration was given to such possibilities since they were not contemplated in the settlement proposal.

Faced with its inability to make the type of findings that the Court had stated would be a prerequisite to any modification of the producers refund obligations, the Commission fell back upon its contention that rate of return

and exploration and development expenses had been undervalued in its previous decision (J.A. II, 653), and that in any event it is free under the Act to dispense with refunds (J.A. II, 652). The answering briefs attempt to suggest that the new Commission conclusions as to rate of return and the method of determining E & D expenses rest on evidence in the reopened proceeding of increased costs or revenue needs and, therefore, the fact that the Court had approved the costs upon which the refund obligation was based does not bar their retroactive re-evaluation. But since the costs in question all relate to gas sold and produced prior to the date of the original 1968 decision, evidence of a need for an increased return as a result of subsequent developments would be irrelevant. Moreover, the direct assignment method of fixing E & D expenses now adopted by the Commission, albeit with some reservations, is nothing new; it was proposed by the producers and rejected in the earlier opinion (see 40 F.P.C. 530, 593-595).[6] It is also noteworthy that with respect to cash expenses for continuing production operations—the one aspect of cost for flowing gas which is not a sunken cost but continues throughout the life of the reserves—the Commission's findings indicate that costs actually decreased between 1968 and 1971 from 1.93 cents per Mcf to 1.81 cents per Mcf (Compare 40 F.P.C. 530 at 603 with 46 F.P.C. 86 at 137).

The Commission's final attempt to justify the elimination of approximtaely $225,000,000 in refunds rests on its claim that since Section 4(a) of the Act states that the Commission "may" order refunds of charges it has found were not justified, it is under no obligation to do

---

[6] Commissioner Carver's dissenting opinion on rehearing (41 F.P.C. 39, 367 *et seq.*) had suggested that adjustments in return and E & D expense, might have been appropriate at the time of the earlier case. But the Court expressly rejected Commissioner Carver's views on these matters as establishing a basis for legal error in the Commission's decision (428 F.2d at 434).

so (FPC Br. 40-41). Thus, it is suggested, the Commission in its discretion might have excused all refunds, and consumer interests, like New York, have no basis for complaint if it instead chooses to excuse only 60% of the total overpayment. There is, however, no basis for the conclusion that the Commission can meet its statutory responsibilities of providing consumers with a "complete, permanent and effective bond of protection from excessive rates and charges" (*Atlantic Refining Company* v. *Public Service Commission*, 360 U.S. 378, 388) and at the same time allow producers to pocket charges in excess of the lawful just and reasonable rate they have collected subject to refund, while the proper level of the rate was being determined.

On the contrary, the entire rationale for permitting regulated companies to collect higher rates, subject to refund, pending a determination of the appropriate just and reasonable level, rather than permitting increases to become effective only after agency approval, was that the refund obligation would provide some protection to consumers from exploitation,[7] and thus the regulated company could be permitted to collect its claimed rate *pendente lite*. Cf. *Arrow Transportation Co.* v. *Southern Railway Co.*, 372 U.S. 658, 663-667. As we pointed out in our opening brief (at pp. 32-33 and n. 22), the cases cited by the Commission for its claimed discretion to withhold refunds are, without exception, certificate cases under Section 7 of the Act, where no express refund obligation has been imposed upon the interim collection of the challenged rate but the Courts held the Commission nonetheless had power to order refunds. It is anomalous, indeed, to find these cases cited for the Commission's authority to disregard one of its principal statutory obligations.

---

[7] But see *Federal Power Commission* v. *Tennessee Gas Transmission Corp.*, 371 U.S. 145, 154-155.

2. The Invalidity of the Contingent Escalations and Refund Work-Off Provisions of the "Settlement".

The Court will at once recognize the most remarkable aspect of the answering briefs—the absence of any serious discussion of the District of Columbia Circuit's decision in the *Texas Gulf Coast Area Natural Gas Rate Cases (Public Service Commission* v. *Federal Power Commission)*, 487 F.2d 1043. The major producers cannot bring themselves to even mention the decision in their briefs and the Commission confines itself to a bare reference to its existence in a footnote to the Statement (FPC Br. 14, n. 10). The attempted exorcism by silence does not, however, diminish the pertinence of Judge Leventhal's analysis of the legal deficiencies of contingent escalation and refund write-off provisions which are substantially identical to those involved here, and which here, as there, are unsupported by any factual predicate (see 487 F.2d at 1068-1078).

The Commission brief, in a brave attempt to make a virtue out of its failure to deal with the discriminatory features of the two proposals, suggests that its recognition of the inequality of treatment among the producers supports its action in approving the provisions without change since any group rate affects individual members of the group differently (FPC Br. 52). But as Judge Leventhal pointed out in the *Texas Gulf Coast* case, *supra*, 487 F.2d at 1076, the fact that a group rate will have an unequal impact upon producers with different costs does not justify establishing rate or revenue provisions which are deliberately intended to prefer producers with the largest existing position in the production area, regardless of the extent of their future efforts, or to favor those few producers who persisted in charging the high out-of-line rates in the past. It is no answer to state that those producers who reduced their rates and, therefore, their refund obligations by entering into rate settle-

ments, took the risk that they would secure less than if they had litigated the case to the end. They were, of course, aware that the just and reasonable rate level might be set above that to which they had agreed. But up until the time the Commission adopted the refund write-off provisions in the *Texas Gulf Coast* and *Southern Louisiana* area cases, there was no reason to believe that the Commission would permit producers to collect their contract prices regardless of just and reasonable levels it subsequently set, by the device of adding the excess revenues collected for past periods to the rates they could charge for new gas sales.

We see no need for belaboring the point with respect to discrimination between producers, and the Commission's complete unwillingness to consider modifications of the settlement proposal which would eliminate or mitigate these problems.[8] Serious as they are, they were at least recognized and discussed by the Commission in its opinions. And they are treated at length in the Mobil briefs. This is not the case with respect to the equally significant failure of both the refund work-off and contingent escalation provisions of the Commission approved settlement to ensure that the pipeline consumers paying the costs of the increased flowing gas rates and refunds foregone receive their fair share of any benefits resulting therefrom. The consumer complaints with respect to these provisions were simply ignored by the Commission in its orders to the extent they were not subsumed in the Commission's general statements that it believed it proper and

---

[8] See, *e.g.*, the Commission's rejection of Texaco's modest suggestion that the contingent escalations of flowing gas rates be related to those producers actually dedicating new acreage rather than those who do nothing or sell their gas at higher prices in the unregulated intrastate market. The Commission's sole response was that Texaco's proposal had "much to commend it" but unfortunately was not part of the "settlement package" (J.A. II, 874).

wase to accept the settlement as proposed because it had the support of an industry consensus.

The answering briefs similarly attempt to sweep consumer complaints under the bed. Thus, we pointed out that the contingent escalations of flowing gas could result in providing producers with up to about $750,000,000 as a reward for dedicating substantially less gas to the interstate market over a *nine*-year period than the producers had actually dedicated over the *five*-year period ending in 1968 and only one-quarter of the reserves the Commission itself was necessary in the ensuing seven years (NY Br. 36). To this the Commission merely responds (FPC Br. 57) that "this is a matter for the Commission's expert judgment, based on its knowledge of the industry and the producing area. An otherwise reasonable incentive program is not to be upset simply because some parties take a different view of what the level of incentive should be."

This, we respectfully suggest, is a contemptuous response since the issue we had posed was whether a three-quarter of a billion dollar incentive plan at this level of projected new gas dedications was "reasonable", or whether, as appears to be the case, the Commission merely rubber-stamped the levels included in the settlement proposal despite their gross deviation from its own findings of need. The ultimate determination of the extent of the additional allowance to be afforded for particular amounts of new gas dedications in any otherwise rational incentive plan might well be a matter for the Commission's "expert judgment". But only if it is the product of a Commission evaluation of the facts of record, and the basis therefor is set out in its decision.

The same is true with respect to the responses in the Commission brief to our contentions that under the refund write-off program the pipeline whose customers are

owed the refund [9] are guaranteed only half of the new dedications, and that under the contingent escalation scheme there is *no* assured relationship between the pipelines whose customers will pay the bonus through increased rates on pre-1969 sales, and those who will secure the additional gas. The Commission's brief, apparently not recognizing its internal inconsistency, defends the refund work-offs' "50-percent rule" as a proper compromise between the competing interests (FPC Br. 56-57).[10] It then turns around and supports the contingent escalation's failure to provide *any* protection to the parties asked to bear the cost, on grounds of unstated "practical difficulties of administering an allocation program", and a general claim that "the Commission may take a broader view of the public interest" (FPC Br. 61).

Similarly it is, of course, true that new entrants in any field of commerce may start at a disadvantage as compared with those already established. But this fact does not, as the Commission brief (pp. 55-56) appears

---

[9] See *Texas Eastern Transmission Corp.* v. *Federal Power Commission*, 414 F.2d 344, certiorari denied, 398 U.S. 928.

[10] We see no merit to this after-the-fact rationalization in the Commission's brief for rejecting a requirement that the producer work-off all of its refund obligation to the pipeline (and its customers) who paid the excess charges which resulted in the refunds. If the Commission can properly require consumers to forego refunds owed them for past overcharges in order to induce additional gas dedications, it would appear that those who paid the price should reap the reward.

There is no record support for the Commission's present claim that such a requirement would result either in undue preference for some pipelines or significantly affect the location of future producer exploration, since, as we pointed out in our main brief (pp. 46-47), the parties sponsoring the settlement did not choose to take advantage of the opportunity given them by the Commission to support the settlement provisions at the hearing. In any event, such evidence would go to show the impropriety of any scheme tying relief from refund obligations to dedications of new gas to other purchasers.

to suggest, justify approval of an industry sponsored "rate design" calculated to entrench the producers with the largest existing position in the area, by associating an appreciable percentage of the revenues for new gas dedications with the sales already made by the esablishment producers. It is, we suggest, a confession of error for the Commission to repeat (FPC Br. 56, n. 32) the Opinion's statement that the provisions of its order will encourage new entrants into the market. For if this is the case, it is only because the 26 cent new gas price is, as the Commission in fact found (J.A. II, 642), at "an appropriate level which will elicit exploratory and development effort in Southern Louisiana." In that case, the huge non-cost bonuses to the existing producers were clearly unnecessary.[11]

3. The Commission's Improper Consideration of the "Settlement Proposal".

We continue to believe that an underlying vice of the Commission's Opinions is its method of treatment of the contested settlement proposal advanced by some of the parties to the proceeding. We have not suggested that the lack of unanimous support for the proposal precluded the Commission from considering the proposal, and it is, of course, theoretically conceivable that after a section-by-section analysis of the proposal, the Commission upon

---

[11] In a passage reminiscent of Anatole Francis' epigram with respect to the equality of rich and poor under the law since both are prohibited from sleeping under bridges, the Commission denies the refund workoff has the effect of providing additional revenues for new gas to those producers who charged excessive rates in the past. All the plan does, we are told (FPC Br. 52), is to "permit all producers equally to invest the capital generated by the newly established base rates in further exploration and development rather than in refund payments". In fact, as the Commission is well aware, its refund work-off scheme allows a few producers to pocket $150,000,000 *in excess* of the "newly established base rates", in addition to securing revenues for new gas at these higher new rates.

a proper record could affirm the settlement in its entirety. But, as we pointed out in detail in our opening brief (pp. 45-48), this is not what the Commission did here. On the contrary, in one area after another the Commission accepted the settlement's provisions, without any serious attempt at considering alternatives or modifying or limiting its contents, solely *because* the provision was part of the overall settlement.

The Commission's brief (pp. 30-32) is commendably frank in setting forth its concept of its obligations in considering non-unanimous settlement proposals. But its position, we suggest, is the converse of its actual responsibilities under the Natural Gas Act. Thus, it states that in applying its "expert judgment" to the task of reconciling conflicting interests it "gave weight to the delicate balance struck *by those who supported the settlement proposal*". This, as it recognizes *(Ibid.)*, is a paraphrase of the Commission's statement in its Opinion (J.A. II, 597) that it could determine questions of "how much and how [higher revenues] are to be spread in the light of the quasi-bargaining position of the parties". What both of these statements mean, however, is that in a contested proceeding the Commission can permit some of the parties to make the expert judgments for it on the basic substantive matters in issue, with the Commission, at most, playing the role of a reviewing court in ensuring that the resolutions sponsored by the consensus are not unreasonable. This is clearly not the role Congress assigned to the Commission, even, as is not the case here, the Commission had insisted that the contested settlement provisions were supported by substantial record evidence.

The Commision's fallacious views of *its* responsibilities under the Act, is compounded by its apparent belief (FPC Br. 31, see J.A. II, 870) that once higher revenue needs are conceded, everything else in its decision (in-

cluding the amount of additional revenues) is essentially a matter of "rate design", not really susceptible of review under the "end result" test of the *Hope* case.[12] But the courts have never suggested that once the overall service for a natural gas company was determined, allocation, rate design or zoning questions which will determine how these costs are to be reflected in rates to particular customers can be left to any consensus agreement among some of the parties and are thus not to be separately considered on review. See, *e.g.*, *Colorado Interstate Gas Co.* v. *Federal Power Commission*, 324 U.S. 581. And this is, of course, all the more true where the total amount of the revenues to be collected (or not refunded) are also a subject of dispute. Nor is this how this Court approached group rate making in its decision in the *Permian Basin Area Rate Cases*, 390 U.S. 747. On the contrary, its opinion there carefully examines the basis for each facet of the Commission's complex decision.

This is a critical question, going far beyond the limits of the present proceeding. For the Commission has increasingly in recent years asserted the right to pass upon non-unanimous "settlement proposals" put before it as a resolution of the contested proceeding (and, as here, bypassing any Initial Decision by a Presiding Law Judge). If the Commission can continue to reject opposing points of view which have "much to commend [them]" solely because they had not been incorporated into the consumers' proposal (see J.A. II, 874), the basic procedural safeguards embedded in the Administrative Procedure Act, 5 U.S.C. § 1001 *et seq.*, and regulatory statutes like the Natural Gas Act, can and will become little more than a facade.

---

[12] *Federal Power Commission* v. *Hope Natural Gas Co.*, 320 U.S. 591, 602.

CONCLUSION

For the reasons set forth herein and in our opening brief, the opinion of the Court below should be reversed, the case remanded with directions that the Commission's Opinion and Orders be set aside, and the illegal provisions thereof eliminated.

Respectfully submitted,

CHARLES A. ZIELINSKI
Assistant to the Chairman
PUBLIC SERVICE COMMISSION
OF THE STATE OF NEW YORK
44 Holland Avenue
Albany, New York 12208

MICHAEL H. ROSENBLOOM
WILNER & SCHIENER
2021 L Street, Northwest
Washington, D. C. 20036

April, 1974